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MANATT, PHELPS & PHILLIPS, LLP  
 SUSAN E. HOLLANDER (Bar No. CA 133473)  
 BRITT L. ANDERSON (Bar No. CA 212092)  
 E-mail: patrademarks@manatt.com  
 1001 Page Mill Road, Building 2  
 Palo Alto, CA 94304-1006  
 Telephone: (650) 812-1300  
 Facsimile: (650) 213-0260

Attorneys for Plaintiff  
 24 Hour Fitness USA, Inc.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT  
 SAN FRANCISCO DIVISION

HRL

CV 08

1681

24 Hour Fitness USA, Inc.,

No.

Plaintiff,

COMPLAINT FOR DECLARATORY RELIEF  
AND DEMAND FOR JURY TRIAL

vs.

Apex Stores, LLC,

Defendant.

Plaintiff 24 Hour Fitness USA, Inc. ("24 Hour Fitness" or "Plaintiff"), for its  
 complaint against Apex Stores, LLC ("Defendant"), by its attorneys, Manatt, Phelps & Phillips  
 LLP, alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory judgment brought under the Declaratory Judgment Act,  
 28 U.S.C. § 2201, for the purpose of determining actual questions of controversy between the  
 parties. The claims alleged herein arise under the Lanham Act, 15 U.S.C. § 1051 *et seq.*  
 Defendant has alleged that Plaintiff's use of Plaintiff's federally registered APEX marks are  
 likely to cause confusion with Defendant's own APEX formative marks. Plaintiff now seeks a  
 judicial declaration that its use of its APEX marks do not infringe on Defendant's marks.

**THE PARTIES**

2. Plaintiff is a corporation organized and existing under the laws of California, with a principal place of business at 12647 Alcosta Boulevard, Suite 500, San Ramon, California 94583.

3. On information and belief, defendant Apex Stores, LLC is a limited liability company organized and existing under the laws of Rhode Island, with a principal place of business at 100 Main Street, Pawtucket, Rhode Island 02860.

**JURISDICTION**

4. This Court has subject matter jurisdiction over this action pursuant to (i) 28 U.S.C. § 1331, as this action arises out of the laws of the United States of America; (ii) 15 U.S.C. § 1121, as this action involves claims under the Lanham Act of 1946, as amended, 15 U.S.C. § 1051 et seq.; (iii) 28 U.S.C. § 1338(a) and (b), as this action arises in part under an Act of Congress relating to trademarks; and (iv) 28 U.S.C. § 2201, as this is an action for declaratory judgment brought for the purpose of determining actual questions of controversy between the parties.

**VENUE**

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) as this is the judicial district in which a substantial part of the events or omissions giving rise to Defendant's claims of infringement allegedly occurred.

**INTRADISTRICT ASSIGNMENT**

6. This action may be assigned to the San Francisco Division pursuant to Local Rule 3-2(c), (d) as this action arises in Contra Costa County, where a substantial part of the events or omissions giving rise to Defendant's claims of infringement allegedly occurred.

**24 HOUR FITNESS AND ITS APEX FITNESS GROUP BUSINESS**

7. 24 Hour Fitness is a premier chain of health and fitness clubs. In fact, it is one of the largest privately-held health and fitness chains in the world. Founded in 1983, its mission is to enhance people's lifestyles through fitness and regular exercise. Its clubs are distinguished by high quality services, including numerous cardiovascular and strength training machines and exercise equipment, superior aerobic and exercise classes, a wide range of free weights, and many

amenities, such as personal training programs, basketball and racquetball courts, lap pools, rock climbing, saunas, pro shops, child care, knowledgeable staff, and much more.

8. Though its wholly owned subsidiary, Apex Fitness, Inc., also doing business as Apex Fitness Group, 24 Hour Fitness also provides cutting-edge integrated fitness and nutrition programs and products under distributorships offered to health and fitness clubs throughout the United States. Plaintiff has offered its distributorships and related goods and services in the health and fitness field under the APEX name since at least as early as 1994. In connection with its business, 24 Hour Fitness offers the following products and services under the APEX marks listed below ("Plaintiff's Marks"), among others.

Mark	Reg. / App. No.	Goods/Services
APEX FIT (Stylized)	3,045,062	Class 5: Nutritional products, namely nutritional supplements and nutritionally fortified beverages; dietary supplements in the nature of nutritional bars and cookies; food supplements; meal replacement and dietary supplement drink mixes and powders; nutritional drink mix or powder for use as a meal replacement; vitamins.
APEX LEAN (Stylized)	3,034,722	Class 5: Nutritional products, namely nutritional supplements and nutritionally fortified beverages; dietary supplements in the nature of nutritional bars and cookies; food supplements; meal replacement and dietary supplement drink mixes and powders; nutritional drink mix or powder for use as a meal replacement; vitamins.
APEX FIX (Stylized)	3,004,281	Class 29: Food products, namely soy based food bars and cookies.
APEX FIX (Stylized)	3,004,280	Class 30: Food products, namely grain based food bars and cookies.
APEX MAX (Stylized)	2,997,642	Class 5: Nutritional products, namely nutritional supplements and nutritionally fortified beverages; dietary supplements in the nature of nutritional bars and cookies; food supplements; meal replacement and dietary supplement drink mixes and powders; nutritional drink mix or powder for use as a meal replacement; vitamins.
APEX & Design	2,936,205	Class 5: Nutritional and food supplements; vitamins and minerals; vitamin and mineral supplements Class 9: Audio and visual recordings, namely, pre-recorded cassettes, videos, DVDs, and CD-ROMs in the field of health, fitness, or nutrition Class 16: Printed matter, namely books, instruction manuals, periodicals, brochures, and magazines in the field of health, fitness, or nutrition Class 35: Distributorship featuring vitamins & fitness programs Class 41: Instruction and training services in the field of fitness and nutrition Class 44: Providing information in the field of nutrition and fitness
APEX FITNESS	2,703,428	Class 35: Distributorships featuring vitamins and fitness programs in the

Mark	Reg. / App. No.	Goods/Services
GROUP (and Star Person Design)		form of licensed software, videotapes, and printed information
APEX FITNESS GROUP (and Star Person Design)	2,702,445	Class 9: Audio and visual recordings, namely, prerecorded cassettes, compact discs, videos, DVDs, and CD-ROMS in the field of health, fitness, or nutrition
APEX FITNESS GROUP (and Star Person Design)	2,702,444	Class 16: Printed matter, namely books, instruction manuals, periodicals, brochures, and magazines in the field of health, fitness, or nutrition.
APEX TRAINING SYSTEM (and Star Person Design)	2,701,627	Class 35: Distributorships featuring vitamins and fitness programs in the form of licensed software, videotapes, and printed information
APEX FITNESS GROUP VIRTUAL GYM	78/851,695	Class 41: Providing an on-line computer database featuring information regarding fitness services which allow users to create fitness programs; providing information in the field of fitness and bodybuilding; consultation services with personal trainers.  Class 44: Providing information in the field of nutrition

Attached as Exhibit 1 are true and correct copies of the electronic records for these registrations printed from the United States Patent and Trademark Office's ("USPTO") online database.

### **DEFENDANT'S BUSINESS**

9. On information and belief, Defendant was founded in 1924 as a tire retreading, automotive service and manufacturing business, and has since expanded in various retail businesses including real estate development and management and financial services. In connection with its business, Defendant offers the following products and services under the APEX mark ("Defendant's Marks"):

MARK	App./Reg. No.	Goods or Services
APEX	1,847,961	IC 042. US 101. G & S: retail department store services. FIRST USE: 19420900. FIRST USE IN COMMERCE: 19420900
APEX	2,155,905	IC 037. US 100 103 106. G & S: automotive repair and maintenance services. FIRST USE: 19240000. FIRST USE IN COMMERCE: 19240000  IC 042. US 100 101. G & S: retail automobile parts and accessories stores. FIRST USE: 19240000. FIRST USE IN COMMERCE: 19240000
APEX MALL	2,657,639	IC 036. US 100 101 102. G & S: Shopping mall services and leasing of shopping mall space. FIRST USE: 19660000. FIRST USE IN COMMERCE: 19660000



1	APEX STORES	2,443,933	IC 035. US 100 101 102. G & S: Retail store, mail order purchase and computerized on-line retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, housewares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes, athletic footwear, novelties, food and Christmas items. FIRST USE: 19961101. FIRST USE IN COMMERCE: 19961101
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7	APEX ONLINE	2,562,812	IC 035. US 100 101 102. G & S: Retail store, mail order purchase and computerized on-line retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, housewares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes, athletic footwear, novelties, food and Christmas items. FIRST USE: 19961101. FIRST USE IN COMMERCE: 19961101
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13	APEX ADVANTAGE	2,918,976	IC 040. US 100 103 106. G & S: Custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving, customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words, and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products. FIRST USE: 19961201. FIRST USE IN COMMERCE: 20020901
14			
15			
16			
17	APEX COMPANIES	3,244,685	IC 040. US 100 103 106. G & S: custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving, customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words, and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901
18			
19			
20			
21	APEX COMPANIES	78/928,022	IC 035. US 100 101 102. G & S: Promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks; providing an on-line advertising guide featuring the goods and services of others; electronic retailing services and ordering services via computer featuring a wide variety of merchandise; Retail store and advertising services, featuring a wide variety of merchandise; arranging for others the repair, service and replacement of a wide variety of general merchandise and vehicles; retail automobile parts and accessories stores; retail store services featuring customer pick-up and/or payment of newly purchased or repaired merchandise; pick up and delivery services; business, advertising, marketing and management consulting services.
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		FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901
		IC 037. US 100 103 106. G & S: Automobile repair and maintenance. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901
APEX COMPANIES	78/928,052	IC 036. US 100 101 102. G & S: Shopping Mall services, namely leasing and management of shopping mall space; real estate management; financial services in the nature of investments and financing in the field of real estate, securities, debt, venture capital and loans. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901
		IC 037. US 100 103 106. G & S: Real estate development. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901

Attached as Exhibit 2 are true and correct copies of the electronic records for these registrations printed from the USPTO online database.

#### FACTUAL BACKGROUND

10. On or about December 15, 2006, the USPTO issued an office action in which it refused Defendant's U.S. Application Serial No. 78/928,022, for the mark APEX COMPANIES, based, in part, on certain of Plaintiff's federal registrations.

11. On or about November 1, 2007, counsel for Defendant sent 24 Hour Fitness a letter enclosing a Petition for Cancellation that had been filed that same day with the USPTO. Attached as Exhibit 3 is a true and correct copy of this letter with enclosure.

12. In Defendant's Petition for Cancellation, Defendant sought to cancel in whole or in part Plaintiff's Marks under U.S. Registration Nos. 2,701,627, 2,703,428 and 2,936,205 based on its claim that these marks are confusingly similar to one or more of Defendant's Marks in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). Defendant further asserted the claim that Plaintiff's continued use of Plaintiff's Marks is diluting the distinctive quality of one or more of Defendant's Marks. *See* Exhibit 3. On December 12, 2008, Plaintiff answered Defendant's Petition for Cancellation by denying Defendant's relevant allegations regarding likelihood of confusion and dilution and asserting its affirmative defenses.

13. Following Defendant's November 1 letter, counsel for Plaintiff and Defendant discussed the potential for settlement of the matter. However, on or about March 10, 2008, counsel for Defendant sent counsel for Plaintiff a letter stating that 24 Hour Fitness' continued use of its APEX and APEX FITNESS marks resulted in "a great likelihood of confusion" with Defendant's marks, and that Defendant was "unwilling to compromise" and wanted to "protect its rights." Attached as Exhibit 4 is a true and correct copy of this letter.

14. To date, the parties have been unable to resolve their dispute.

15. On information and belief, one or more of Plaintiff's Marks and/or use by Plaintiff on relevant goods and services of the APEX name precedes Defendant's first use and/or registration of one or more of its APEX marks.

### **FIRST CLAIM FOR RELIEF**

#### **(Declaratory Relief – Noninfringement Of Trademark, 15 U.S.C. § 1125(a))**

16. 24 Hour Fitness realleges and incorporates by reference paragraphs 1 through 15 above.

17. As a result of Defendant's actions, there is an actual controversy between Plaintiff and Defendant as to whether Plaintiff's continued use of Plaintiff's Marks is likely to cause mistake or to deceive as to the affiliation, connection or association between Defendant and Plaintiff, or as to the origin, sponsorship, or approval of Defendant's goods or services or commercial activities by Plaintiff.

18. In light of Defendant's claim of infringement of its trademarks, 24 Hour Fitness has a reasonable and real apprehension that it faces an immediate lawsuit by Defendant, which lawsuit may affect its ability to use and or maintain registrations for Plaintiff's Marks.

19. A judicial declaration pursuant to 28 U.S.C. §§ 2201 and 2202 is necessary and appropriate so that 24 Hour Fitness may ascertain its rights with respect to its continued use and registration of its marks.

### **PRAYER FOR RELIEF**

20. WHEREFORE, 24 Hour Fitness prays for relief against Defendant as follows:

(a) A declaratory judgment that Plaintiff's use and registration of Plaintiff's Marks does not infringe on any of Defendant's Marks;

1 (b) Injunctive relief restraining Defendant, and its agents, successors and  
2 assigns, and all others acting in concert and privity with it, from bringing any lawsuit or threat  
3 against Plaintiff of trademark infringement or dilution in connection with Plaintiff's use and  
4 registration of Plaintiff's Marks;

5 (c) Plaintiff's costs and disbursements incurred in this action, including its  
6 reasonable attorneys' fees; and

7 (d) Such other and further relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 24 Hour Fitness USA, Inc. hereby demands a trial by jury of all issues triable by a  
10 jury.

11 Dated: March 27, 2008

MANATT, PHELPS & PHILLIPS, LLP

12  
13 By: 

14 Susan E. Hollander  
15 Britt L. Anderson  
16 Manatt Phelps & Phillips, LLP  
17 1001 Page Mill Road, Bldg. 2  
18 Palo Alto, CA 94304  
19 Tel: (650) 812-1300  
20 Fax: (650) 213-0260

21 *Attorneys for Plaintiff*  
22 24 HOUR FITNESS USA, INC.  
23  
24  
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27  
28



**EXHIBIT 1**



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<b>Word Mark</b>	APEX FIT
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: Nutritional products, namely nutritional supplements and nutritionally fortified beverages; dietary supplements in the nature of nutritional bars and cookies; food supplements; meal replacement and dietary supplement drink mixes and powders; nutritional drink mix or powder for use as a meal replacement; vitamins. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	24.15.10 - Arrows, more than one; More than one arrow 24.15.25 - Other arrows 26.17.12 - Angles (geometric); Chevrons 27.03.01 - Geometric figures forming letters, numerals or punctuation
<b>Serial Number</b>	78440633
<b>Filing Date</b>	June 24, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	October 25, 2005
<b>Registration Number</b>	3045062
<b>Registration Date</b>	January 17, 2006
<b>Owner</b>	(REGISTRANT) Apex Fitness, Inc. CORPORATION CALIFORNIA 12647 Alcosta Boulevard, Suite 500 San Ramon CALIFORNIA 94583

(LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647  
ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583

<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	the firm of Manatt, Phelps & Phillips, LLP, and, in particular, Susan E. Hollander, Esq. and Paul E. Thomas, Esq.
<b>Prior Registrations</b>	1932876;2701627;2703428;AND OTHERS
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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<b>Word Mark</b>	APEX LEAN
<b>Goods and Services</b>	IC 005. US 006 018 044 046 051 052. G & S: Nutritional products, namely nutritional supplements and nutritionally fortified beverages; dietary supplements in the nature of nutritional bars and cookies; food supplements; meal replacement and dietary supplement drink mixes and powders; nutritional drink mix or powder for use as a meal replacement; vitamins. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.17.12 - Angles (geometric); Chevrons 27.03.01 - Geometric figures forming letters, numerals or punctuation
<b>Serial Number</b>	78440637
<b>Filing Date</b>	June 24, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	October 4, 2005
<b>Registration Number</b>	3034722
<b>Registration Date</b>	December 27, 2005
<b>Owner</b>	(REGISTRANT) Apex Fitness, Inc. CORPORATION CALIFORNIA 12647 Alcosta Boulevard, Suite 500 San Ramon CALIFORNIA 94583  (LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647

ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583

**Assignment  
Recorded**

ASSIGNMENT RECORDED

**Attorney of  
Record**

the firm of Manatt, Phelps &amp; Phillips, LLP, and, in particular, Susan E. Hollander, Esq. and Paul E. Thomas, Esq.

**Prior  
Registrations**

1932876;2701627;2703428;AND OTHERS

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Live/Dead  
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**apex**»»

**FIX**

<b>Word Mark</b>	APEX FIX
<b>Goods and Services</b>	IC 029. US 046. G & S: Food products, namely soy based food bars and cookies. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	24.15.04 - Arrowheads 24.15.10 - Arrows, more than one; More than one arrow 24.15.25 - Other arrows 26.17.12 - Angles (geometric); Chevrons 27.03.01 - Geometric figures forming letters, numerals or punctuation
<b>Serial Number</b>	78469695
<b>Filing Date</b>	August 18, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	July 12, 2005
<b>Registration Number</b>	3004281
<b>Registration Date</b>	October 4, 2005
<b>Owner</b>	(REGISTRANT) Apex Fitness, Inc. CORPORATION CALIFORNIA 12647 Alcosta Boulevard, Suite 500 San Ramon CALIFORNIA 94583  (LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647 ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583

**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Paul E. Thomas,  
**Prior Registrations** 1932876;2701627;2703428;AND OTHERS  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**apex**»  
**FIX**

<b>Word Mark</b>	APEX FIX
<b>Goods and Services</b>	IC 030. US 046. G & S: Food products, namely grain based food bars and cookies. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	24.15.04 - Arrowheads 24.15.10 - Arrows, more than one; More than one arrow 24.15.25 - Other arrows 26.17.12 - Angles (geometric); Chevrons 27.03.01 - Geometric figures forming letters, numerals or punctuation
<b>Serial Number</b>	78469684
<b>Filing Date</b>	August 18, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	July 12, 2005
<b>Registration Number</b>	3004280
<b>Registration Date</b>	October 4, 2005
<b>Owner</b>	(REGISTRANT) Apex Fitness, Inc. CORPORATION CALIFORNIA 12647 Alcosta Boulevard, Suite 500 San Ramon CALIFORNIA 94583  (LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647 ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583

**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Paul E. Thomas,  
**Prior Registrations** 1932876;2701627;2703428;AND OTHERS  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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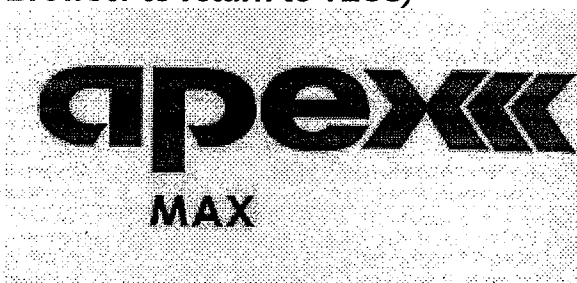
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**Word Mark** APEX MAX  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Nutritional products, namely nutritional supplements and nutritionally fortified beverages; dietary supplements in the nature of nutritional bars and cookies; food supplements; meal replacement and dietary supplement drink mixes and powders; nutritional drink mix or powder for use as a meal replacement; vitamins. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701

**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 26.17.12 - Angles (geometric); Chevrons  
 27.03.01 - Geometric figures forming letters, numerals or punctuation

**Serial Number** 78440646

**Filing Date** June 24, 2004

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** June 28, 2005

**Registration Number** 2997642

**Registration Date** September 20, 2005

**Owner** (REGISTRANT) Apex Fitness, Inc. CORPORATION CALIFORNIA 12647 Alcosta Boulevard, Suite 500 San Ramon CALIFORNIA 94583

(LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647



ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583

**Assignment  
Recorded**

ASSIGNMENT RECORDED

**Attorney of  
Record**

the firm of Manatt, Phelps & Phillips, LLP, and, in particular, Susan E. Hollander, Esq. and Paul E. Thomas, Esq.

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

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<b>Word Mark</b>	APEX
<b>Goods and Services</b>	<p>IC 005. US 006 018 044 046 051 052. G &amp; S: nutritional and food supplements; vitamins and minerals; vitamin and mineral supplements. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701</p> <p>IC 009. US 021 023 026 036 038. G &amp; S: audio and visual recordings, namely, pre-recorded cassettes, videos, DVDs, and CD-ROMs in the field of health, fitness, or nutrition. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701</p> <p>IC 016. US 002 005 022 023 029 037 038 050. G &amp; S: Printed matter, namely books, instruction manuals, periodicals, brochures, and magazines in the field of health, fitness, or nutrition. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701</p> <p>IC 035. US 100 101 102. G &amp; S: Distributorship featuring vitamins &amp; fitness programs. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701</p> <p>IC 041. US 100 101 107. G &amp; S: Instruction and training services in the field of fitness and nutrition. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701</p> <p>IC 044. US 100 101. G &amp; S: Providing information in the field of nutrition and fitness. FIRST USE: 20030701. FIRST USE IN COMMERCE: 20030701</p>
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	26.17.12 - Angles (geometric); Chevrons
<b>Serial Number</b>	78346264
<b>Filing Date</b>	December 29, 2003

**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** January 4, 2005  
**Registration Number** 2936205  
**Registration Date** March 29, 2005  
**Owner** (REGISTRANT) Apex Fitness, Inc. CORPORATION CALIFORNIA 12647 Alcosta Blvd. 5th Flr. San Ramon CALIFORNIA 94583  
  
(LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647 ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	APEX FITNESS GROUP
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: Distributorships featuring vitamins and fitness programs in the form of licensed software, videotapes, and printed information. FIRST USE: 19990601. FIRST USE IN COMMERCE: 19990601
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	01.01.03 - Star - a single star with five points 26.01.21 - Circles that are totally or partially shaded. 26.05.13 - Triangles, exactly two triangles; Two triangles 26.05.21 - Triangles that are completely or partially shaded
<b>Serial Number</b>	75849816
<b>Filing Date</b>	November 16, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	January 14, 2003
<b>Registration Number</b>	2703428
<b>Registration Date</b>	April 8, 2003
<b>Owner</b>	(REGISTRANT) APEX FITNESS, INC. CORPORATION CALIFORNIA 5020 FRANKLIN DRIVE PLEASANTON CALIFORNIA 94588  (LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647 ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583

**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Susan E Hollander Esq  
**Prior Registrations** 1932876  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FITNESS GROUP" APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	APEX FITNESS GROUP
<b>Goods and Services</b>	IC 009. US 021 023 026 036 038. G & S: Audio and visual recordings, namely, prerecorded cassettes, compact discs, videos, DVDs, and CD-ROMS in the field of health, fitness, or nutrition. FIRST USE: 19940131. FIRST USE IN COMMERCE: 19940131
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	01.01.02 - Star - a single star with four points 02.01.33 - Grotesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures 04.07.02 - Objects forming a person; Person formed by objects 26.03.21 - Ovals that are completely or partially shaded 26.19.05 - Prisms ; Pyramids 26.19.25 - Geometric solids other than spheres, cylinders, cones, cube, prisms or pyramids
<b>Serial Number</b>	76422074
<b>Filing Date</b>	June 17, 2002
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	January 7, 2003
<b>Registration Number</b>	2702445
<b>Registration Date</b>	April 1, 2003
<b>Owner</b>	(REGISTRANT) Apex Fitness Group, Inc. CORPORATION CALIFORNIA 5020 Franklin Drive Pleasanton CALIFORNIA 94566

(LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647  
ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583

**Assignment  
Recorded**

ASSIGNMENT RECORDED

**Attorney of  
Record**

Susan E. Hollander, Esq.

**Prior  
Registrations**

1932876

**Disclaimer**

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**Type of Mark**

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<b>Word Mark</b>	APEX FITNESS GROUP
<b>Goods and Services</b>	IC 016. US 002 005 022 023 029 037 038 050. G & S: Printed matter, namely books, instruction manuals, periodicals, brochures, and magazines in the field of health, fitness, or nutrition. FIRST USE: 19940131. FIRST USE IN COMMERCE: 19940131
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	01.01.02 - Star - a single star with four points 02.01.33 - Grotesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures 04.07.02 - Objects forming a person; Person formed by objects 26.03.21 - Ovals that are completely or partially shaded 26.19.05 - Prisms ; Pyramids 26.19.25 - Geometric solids other than spheres, cylinders, cones, cube, prisms or pyramids
<b>Serial Number</b>	76422068
<b>Filing Date</b>	June 17, 2002
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	January 7, 2003
<b>Registration Number</b>	2702444
<b>Registration Date</b>	April 1, 2003
<b>Owner</b>	(REGISTRANT) Apex Fitness Group, Inc. CORPORATION CALIFORNIA 5020 Franklin Drive Pleasanton CALIFORNIA 94566

(LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647  
ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583

**Assignment  
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ASSIGNMENT RECORDED

**Attorney of  
Record**

Susan E. Hollander, Esq.

**Prior  
Registrations**

1932876

**Disclaimer**

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Word Mark	APEX TRAINING SYSTEM
Goods and Services	IC 035. US 100 101 102. G & S: Distributorships featuring vitamins and fitness programs in the form of licensed software, videotapes, and printed information. FIRST USE: 19990601. FIRST USE IN COMMERCE: 19990601
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.01.03 - Star - a single star with five points 26.01.21 - Circles that are totally or partially shaded. 26.05.13 - Triangles, exactly two triangles; Two triangles 26.05.21 - Triangles that are completely or partially shaded
Serial Number	75849815
Filing Date	November 16, 1999
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 7, 2003
Registration Number	2701627
Registration Date	April 1, 2003
Owner	(REGISTRANT) APEX FITNESS, INC. CORPORATION CALIFORNIA 5020 FRANKLIN DRIVE PLEASANTON CALIFORNIA 94588

(LAST LISTED OWNER) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647 ALCOSTA BLVD, SUITE 500 SAN RAMON CALIFORNIA 94583



<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	William E. Levin
<b>Prior Registrations</b>	1932876
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TRAINING SYSTEM" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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**APEX FITNESS GROUP VIRTUAL GYM**

<b>Word Mark</b>	APEX FITNESS GROUP VIRTUAL GYM
<b>Goods and Services</b>	IC 041. US 100 101 107. G & S: Providing an on-line computer database featuring information regarding fitness services which allow users to create fitness programs; providing information in the field of fitness and bodybuilding; consultation services with personal trainers
	IC 044. US 100 101. G & S: Providing information in the field of nutrition
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78851695
<b>Filing Date</b>	March 31, 2006
<b>Current Filing Basis</b>	1B
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	June 19, 2007
<b>Owner</b>	(APPLICANT) 24 HOUR FITNESS USA, INC. CORPORATION CALIFORNIA 12647 ALCOSTA BLVD. SUITE 500 SAN RAMON CALIFORNIA 94583
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Susan E. Hollander, Esq.
<b>Prior</b>	2702445;2703428;2936205

**Registrations**

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE FITNESS GROUP APART FROM THE MARK AS SHOWN

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**Typed Drawing**

<b>Word Mark</b>	APEX
<b>Goods and Services</b>	IC 042. US 101. G & S: retail department store services. FIRST USE: 19420900. FIRST USE IN COMMERCE: 19420900.
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74430251
<b>Filing Date</b>	August 27, 1993
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 10, 1994
<b>Registration Number</b>	1847961
<b>Registration Date</b>	August 2, 1994
<b>Owner</b>	(REGISTRANT) Apex Incorporated CORPORATION RHODE ISLAND 100 Main Street Pawtucket RHODE ISLAND 02860
	(LAST LISTED OWNER) APEX STORES, LLC LTD LIAB CO BY ASSIGNMENT RHODE ISLAND 100 MAIN STREET PAWTUCKET RHODE ISLAND 02860
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	JOHN E. OTTAVIANI,
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20040916.
<b>Renewal</b>	1ST RENEWAL 20040916
<b>Live/Dead Indicator</b>	LIVE

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### Typed Drawing

<b>Word Mark</b>	APEX
<b>Goods and Services</b>	IC 037. US 100 103 106. G & S: automotive repair and maintenance services. FIRST USE: 19240000. FIRST USE IN COMMERCE: 19240000
	IC 042. US 100 101. G & S: retail automobile parts and accessories stores. FIRST USE: 19240000. FIRST USE IN COMMERCE: 19240000
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74529131
<b>Filing Date</b>	May 25, 1994
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	February 17, 1998
<b>Registration Number</b>	2155905
<b>Registration Date</b>	May 12, 1998
<b>Owner</b>	(REGISTRANT) Apex Incorporated CORPORATION RHODE ISLAND 100 Main Street Pawtucket RHODE ISLAND 02860
	(LAST LISTED OWNER) APEX STORES, LLC CORPORATION RHODE ISLAND 100 MAIN STREET PAWTUCKET RHODE ISLAND 02860
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	JOHN E. OTTAVIANI
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Affidavit Text</b>	SECT 15. SECT 8 (6-YR).
<b>Live/Dead Indicator</b>	LIVE





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### Typed Drawing

<b>Word Mark</b>	APEX MALL
<b>Goods and Services</b>	IC 036. US 100 101 102. G & S: SHOPPING MALL SERVICES AND LEASING OF SHOPPING MALL SPACE. FIRST USE: 19660000. FIRST USE IN COMMERCE: 19660000
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	75836787
<b>Filing Date</b>	November 1, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	September 17, 2002
<b>Registration Number</b>	2657639
<b>Registration Date</b>	December 10, 2002
<b>Owner</b>	(REGISTRANT) Apex Stores LLC CORPORATION RHODE ISLAND 100 Main Street Pawtucket RHODE ISLAND 02860
<b>Attorney of Record</b>	Lawrence R. Robins
<b>Prior Registrations</b>	1847961
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "MALL" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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### Typed Drawing

<b>Word Mark</b>	APEX STORES
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: Retail store, mail order purchase and computerized on-line retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, housewares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes, athletic footwear, novelties, food and Christmas items. FIRST USE: 19961101. FIRST USE IN COMMERCE: 19961101
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	75781412
<b>Filing Date</b>	August 23, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	January 23, 2001
<b>Registration Number</b>	2443933
<b>Registration Date</b>	April 17, 2001
<b>Owner</b>	(REGISTRANT) Apex Stores, LLC CORPORATION RHODE ISLAND 100 Main Street Pawtucket RHODE ISLAND 02860
<b>Attorney of Record</b>	John E. Ottaviani
<b>Prior Registrations</b>	1847961;2155905
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STORES" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR).

**Live/Dead  
Indicator** LIVE

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**Typed Drawing**

<b>Word Mark</b>	APEX ONLINE
<b>Goods and Services</b>	IC 035. US 100 101 102. G & S: Retail store, mail order purchase and computerized on-line retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, housewares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men' s and ladies' accessories, shoes, athletic footwear, novelties, food and Christmas items. FIRST USE: 19961101. FIRST USE IN COMMERCE: 19961101
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	75781411
<b>Filing Date</b>	August 23, 1999
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 29, 2001
<b>Registration Number</b>	2562812
<b>Registration Date</b>	April 23, 2002
<b>Owner</b>	(REGISTRANT) Apex Stores, LLC CORPORATION RHODE ISLAND 100 Main Street Pawtucket RHODE ISLAND 02860
<b>Attorney of Record</b>	John E. Ottaviani
<b>Prior Registrations</b>	1847961;2155905
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ONLINE" APART FROM THE MARK AS SHOWN
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR).

**Live/Dead  
Indicator** LIVE

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**Typed Drawing**

**Word Mark** APEX ADVANTAGE  
**Goods and Services** IC 040. US 100 103 106. G & S: CUSTOM FINISHING AND EMBELLISHMENT OF PROMOTIONAL ITEMS, NAMELY, EMBROIDERY, EMBOSING, ENGRAVING, CUSTOMIZED PRINTING, IMPRINTING, SCREEN PRINTING AND PAD PRINTING WITH COMPANY NAMES, LOGOS, MONOGRAMS, WORDS, AND/OR PICTURES FOR PROMOTIONAL AND ADVERTISING PURPOSES ON THE GOODS OF OTHERS, NAMELY, SPORTSWEAR, APPAREL AND OTHER PRODUCTS. FIRST USE: 19961201. FIRST USE IN COMMERCE: 20020901  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 78319107  
**Filing Date** October 27, 2003  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** October 26, 2004  
**Registration Number** 2918976  
**Registration Date** January 18, 2005  
**Owner** (REGISTRANT) Apex Stores, LLC LTD LIAB CO RHODE ISLAND 100 MAIN STREET PAWTUCKET RHODE ISLAND 02860  
**Attorney of Record** JOHN E. OTTAVIANI  
**Prior Registrations** 1847961;1956407;2155905;2443933;2562812;2657639;AND OTHERS  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE





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# APEX COMPANIES

<b>Word Mark</b>	APEX COMPANIES
<b>Goods and Services</b>	IC 040. US 100 103 106. G & S: custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving, customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words, and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78928036
<b>Filing Date</b>	July 12, 2006
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	March 6, 2007
<b>Registration Number</b>	3244685
<b>Registration Date</b>	May 22, 2007
<b>Owner</b>	(REGISTRANT) Apex Stores, LLC LTD LIAB CO RHODE ISLAND 100 Main Street Pawtucket RHODE ISLAND 02860
<b>Attorney of</b>	John E. Ottaviani

**Record**

**Prior Registrations** 2918976

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMPANIES" APART FROM THE MARK AS SHOWN

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# APEX COMPANIES

**Word Mark** APEX COMPANIES

**Goods and Services** IC 035. US 100 101 102. G & S: Promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks; providing an on-line advertising guide featuring the goods and services of others; electronic retailing services and ordering services via computer featuring a wide variety of merchandise; Retail store and advertising services, featuring a wide variety of merchandise; arranging for others the repair, service and replacement of a wide variety of general merchandise and vehicles; retail automobile parts and accessories stores; retail store services featuring customer pick-up and/or payment of newly purchased or repaired merchandise; pick up and delivery services; business, advertising, marketing and management consulting services. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901

IC 037. US 100 103 106. G & S: Automobile repair and maintenance. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 78928022

**Filing Date** July 12, 2006

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Owner** (APPLICANT) Apex Stores, LLC LTD LIAB CO RHODE ISLAND 100 Main Street Pawtucket RHODE ISLAND 02860

**Attorney of Record** John E. Ottaviani  
**Prior Registrations** 1847961;2443933;2657639;2918976;AND OTHERS  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMPANIES" APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**APEX COMPANIES**

<b>Word Mark</b>	APEX COMPANIES
<b>Goods and Services</b>	IC 036. US 100 101 102. G & S: Shopping Mall services, namely leasing and management of shopping mall space; real estate management; financial services in the nature of investments and financing in the field of real estate, securities, debt, venture capital and loans. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901
	IC 037. US 100 103 106. G & S: Real estate development. FIRST USE: 20020901. FIRST USE IN COMMERCE: 20020901
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78928052
<b>Filing Date</b>	July 12, 2006
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Owner</b>	(APPLICANT) Apex Stores, LLC LTD LIAB CO RHODE ISLAND 100 Main Street Pawtucket RHODE ISLAND 02860
<b>Attorney of Record</b>	John E. Ottaviani
<b>Prior Registrations</b>	1847961;2443933;2657639;2918976;AND OTHERS
<b>Disclaimer</b>	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMPANIES" APART FROM THE

**Type of Mark** MARK AS SHOWN  
**Register** SERVICE MARK  
**Live/Dead Indicator** PRINCIPAL  
**Indicator** LIVE

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**EXHIBIT 3**



# EDWARDS ANGELL PALMER & DODGE LLP

2800 Financial Plaza Providence, RI 02903 401.274.9200 fax 401.276.6611 eapdlaw.com

F.D.R. Station  
P.O. Box 130  
New York, NY 10150

**John E. Ottaviani**  
Phone: (401) 276-6405  
Direct Fax: (888) 325.9049  
jottaviani@eapdlaw.com

## **CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

November 1, 2007

24-Hour Fitness USA, Inc.  
12647 Alcosta Boulevard  
Suite 500  
San Ramon, CA 94583

Attention: President

RE: **Apex Stores, LLC v. 24-Hour Fitness USA, Inc.**  
**Cancellation Proceeding before the Trademark Trial and Appeal Board**

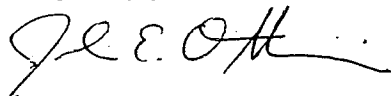
Ladies and Gentlemen:

I am enclosing a copy of a Petition for Cancellation that was filed against your company in the United States Patent and Trademark Office's Trademark Trial and Appeal Board today. The Petition requests cancellation of Registration No. 2,701,627 for the mark APEX TRAINING SYSTEM; Registration No. 2,703,428 for the mark APEX FITNESS GROUP and Registration No. 2,036,205 for the mark APEX, all as they relate to services in Class 35. The Patent and Trademark Office rules require that we serve a copy of this Petition on you as the owner of record of this registration.

Should you wish to speak directly with our client, please contact Mr. Andrew Gates at (401) 729-7200, ext. 7201.

Otherwise, you and your attorneys should be aware that an answer to this Petition for Cancellation should be filed with the Trademark Trial and Appeal Board within forty (40) days.

Very truly yours,



John E. Ottaviani

Enclosure

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 2,701,627  
Date of Issue: April 1, 2003

In the matter of Registration No. 2,703,428  
Date of Issue: April 8, 2003

In the matter of Registration No. 2,936,205  
Date of Issue: March 29, 2005

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**APEX STORES, LLC**

**Petitioner**

**v.**

**24 HOUR FITNESS USA, INC.**

**Registrant**

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**Cancellation No.:**

**CONSOLIDATED PETITION FOR CANCELLATION**

Apex Stores, LLC, a limited liability company organized and existing under the laws of the State of Rhode Island, having a business address of 100 Main Street, Pawtucket, Rhode Island 02860 ("Apex"), believes that it will be damaged by Registration No. 2,703,428 for the mark APEX FITNESS GROUP (and design) and Registration No. 2,701,627 for the mark APEX TRAINING SYSTEM (and design) as they relate to services in Class 35, namely distributorships featuring vitamins and fitness programs in the form of licensed software, videotapes, and printed information, and by Registration No. 2,936,205 for the mark APEX (in stylized form) as it relates to services in Class 35, namely distributorship featuring vitamins and fitness programs, and hereby petitions to cancel the registrations of the said marks for these services.

As grounds for this Petition, Apex avers that:

**Apex and its Marks**

1. Since at least as early as 1924, Apex and its predecessors have used the mark "APEX" and other marks incorporating the word "APEX" on and in connection with various manufacturing, wholesale, retail, on-line retail, commercial and residential real estate development, real estate management and advertising businesses.
2. Apex is the owner of common law rights in the marks APEX, APEX ONLINE and APEX STORES, as a result of the continuous use of the APEX mark since at least as early as 1924 in connection with automotive repair and maintenance services and retail automobile parts and accessories store services, as a result of its continuous use of the APEX mark since at least as early as September 1942 for retail department store services, and as a result of its continuous use of the APEX ONLINE and APEX STORES marks since at least as early as November 1996 in connection with retail store, mail order purchase and computerized online retail services.
3. Apex owns the following U.S. registrations for its trademarks and service marks, among others:

<b><u>Mark</u></b>	<b><u>Registration No.</u></b>	<b><u>Issue Date</u></b>	<b><u>Goods and Services</u></b>
APEX	1,847,961	8/2/1994	Retail department store services (Class 42)
APEX	2,155,905	5/12/1998	Automotive repair and maintenance (Class 37); retail automobile parts and accessories stores (Class 42)
APEX ONLINE	2,562,812	4/23/2002	Retail store, mail order purchase and computerized online retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, house wares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power

<u>Mark</u>	<u>Registration No.</u>	<u>Issue Date</u>	<u>Goods and Services</u>
			equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes athletic foot wear, novelties, food and Christmas items (Class 35)
APEX MALL	2,657,639	12/10/2002	Shopping mall services and leasing of shopping mall space (Class 36)
APEX STORES	2,443,933	4/17/2001	Retail store, mail order purchase and computerized online retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, house wares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, giftware, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes athletic foot wear, novelties, food and Christmas items (Class 35)
APEX ADVANTAGE	2,918,976	1/18/2005	Custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving customized printing, imprinting, screen printing and pad printing with company names, logos, monograms, words and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products (Class 40)
APEX COMPANIES	3,244,685	5/22/2007	Custom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving customized printing, imprinting, screen printing and pad printing with

<u>Mark</u>	<u>Registration No.</u>	<u>Issue Date</u>	<u>Goods and Services</u>
			company names, logos, monograms, words and/or pictures for promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products (Class 40)

Current printouts of information from the TARR electronic database records of the U.S. Patent and Trademark Office showing the current status and title of each registration are attached to this Petition as Exhibits "A" through "G" respectively.

4. Registration No. 1,847,961 for the mark APEX has been renewed pursuant to the provisions of the Lanham Act, and is incontestable.

5. Registration No. 2,155,905 for the mark APEX, Registration No. 2,562,812 for the mark APEX ONLINE and Registration No. 2,443,933 for the mark APEX STORES are incontestable.

6. Apex is the owner of U.S. Application Serial No. 78/928022 to register APEX COMPANIES as a service mark for the following services: "promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks; providing an on-line advertising guide featuring the goods and services of others; electronic retailing services and ordering services via computer featuring a wide variety of merchandise; Retail store and advertising services, featuring a wide variety of merchandise; arranging for others the repair, service and replacement of a wide variety of general merchandise and vehicles; retail automobile parts and accessories stores; retail store services featuring customer pick-up and/or payment of newly purchased or repaired merchandise; pick up

and delivery services; business, advertising, marketing and management consulting services” in Class 35; and for “automobile repair and maintenance” in Class 37.

**Registrant and its Marks**

7. Upon information and belief, 24 Hour Fitness USA, Inc. (“Registrant”) is a California corporation with offices at 12647 Alcosta Boulevard, Suite 500, San Ramon, California 94583.

8. Registrant is the record owner of the following U.S. Trademark Registration for the mark APEX TRAINING SYSTEM (and design):

<b><u>Registration No.</u></b>	<b><u>Issue Date</u></b>	<b><u>Goods and Services</u></b>
2,701,627	4/1/2003	Distributorships featuring vitamins and fitness programs in the form of licensed software, videotapes, and printed information

9. Registrant is the record owner of the following U.S. Trademark Registration for the mark APEX FITNESS GROUP (and design):

<b><u>Registration No.</u></b>	<b><u>Issue Date</u></b>	<b><u>Goods and Services</u></b>
2,703,428	4/8/2003	Distributorships featuring vitamins and fitness programs in the form of licensed software, videotapes, and printed information (Class 35)

10. Registrant is the record owner of the following U.S. Trademark Registration for the mark APEX (stylized):

<b><u>Registration No.</u></b>	<b><u>Issue Date</u></b>	<b><u>Goods and Services</u></b>
2,036,205	3/29/2005	Distributorships featuring vitamins and fitness programs (Class 35), and various other services in five other classes.

**COUNT I: LIKELIHOOD OF CONFUSION**

11. Apex repeats and incorporates herein by reference the averments in the preceding paragraphs.

12. Registrant's APEX FITNESS GROUP, APEX TRAINING SYSTEM and APEX marks are very similar in appearance and commercial impression to Apex's APEX, APEX ONLINE and APEX STORES marks.

13. The distributorship services listed in Registration No. 2,701,627, Registration No. 2,703,428 and Registration No. 2,936,205 are closely related to those of Apex, in particular, to Apex's retail store, mail order purchase and computerized online retail services.

14. On information and belief, Apex is the prior user of the APEX mark. Apex began using APEX in connection with retail department store services at least as early as September 1942, and began using APEX ONLINE and APEX STORES in connection with retail store, mail order purchase and computerized online retail services at least as early as November 1996. Registrant's registrations state that Registrant first used its APEX TRAINING SYSTEM and APEX FITNESS GROUP marks for distributorships featuring vitamins and fitness programs in the form of licensed software, videotapes and printed information on June 1, 1999, and that Registrant first used its APEX mark for distributorships featuring vitamins and fitness programs on July 1, 2003. Consequently, Registrant's date of first use for each of these marks is subsequent to Apex's actual date of first use of its APEX, APEX ONLINE and APEX STORES mark for the identical or closely related services.

15. Apex has expended considerable effort and expense in promoting its APEX, APEX ONLINE and APEX STORES service marks and the goods and the services sold under

such marks, with the result that the purchasing public has come to know, rely upon and recognize the products and services of Apex by such marks.

16. Registrant's APEX TRAINING SYSTEM, APEX FITNESS GROUP and APEX service marks are confusingly similar to Apex's APEX, APEX ONLINE and APEX STORES service marks and are likely to cause confusion, deception or mistake to Apex's irreparable damage and injury, in violation of Section 2(d) of the Lanham Act, 15 USC §1052(d).

17. If Registrant is permitted to retain the registrations sought to be cancelled, and thereby the prima facie exclusive right to use in commerce the APEX TRAINING SYSTEM, APEX FITNESS GROUP and APEX mark on the identical or closely related services offered by Apex, a cloud will be placed on Apex's title to its trademarks, APEX, APEX ONLINE and APEX STORES and Apex's right to enjoy the full and exclusive use of the APEX, APEX ONLINE and APEX STORES marks in the United States in connection with the promotion of its services.

18. If Registrant is permitted to retain the registrations sought to be cancelled, Apex has been advised by the U.S. Patent and Trademark Office that Apex's pending application Serial No. 78/928022 to register the service mark APEX COMPANIES as a service mark for its services may be refused.



Oct 31 07 03:31p

APEX

(401)723-9452

p.2

### COUNT II: DILUTION

18. Apex repeats and incorporates herein reference the averments in the preceding paragraphs.

19. Apex is damaged and will continue to be damaged because Registrant's continued use and registration of the APEX TRAINING SYSTEM, APEX FITNESS GROUP and APEX marks dilute the distinctive quality of Apex's APEX, APEX STORES and APEX ONLINE service marks.

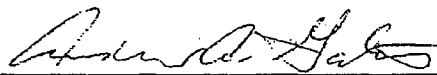
### PRAYER FOR RELIEF

WHEREFORE, Apex respectfully requests that Registration No. 2,701,627, Registration No. 2,703,428 and Registration No. 2,936,205 be cancelled as they relate to services in Class 35.

The filing fee of \$[900] for this Petition to Cancel is being submitted electronically with this Petition.

Apex hereby appoints John E. Ottaviani, of the law firm of Edwards Angell Palmer & Dodge LLP, a member of the bars of the State of Rhode Island and the Commonwealth of Massachusetts, as its attorney with full power of substitution and revocation, to prosecute this cancellation proceeding, and to transact all business in the U.S. Patent and Trademark Office in connection herewith.

APEX STORES, LLC

By:   
Andrew A. Gates, Manager

Dated: October 31, 2007

Oct 31 07 03:28p

APEX


(401)723-9452

p.3

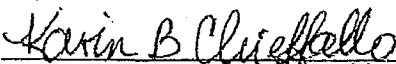
STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

Andrew A. Gates, hereby duly sworn, deposes and says that he is a Manager of Apex Stores, LLC and is authorized to execute this document on behalf of said corporation; that he has read and signed the same and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes them to be true.

  
Andrew A. Gates, Manager

Subscribed and sworn to, before me this 31<sup>st</sup> day of October, 2007.

  
Notary Public ID# 48663

My commission expires: 9-6-2009

KARIN B. CHIEFFALLO  
Notary Public, State of Rhode Island  
My Commission Expires Sept. 6, 2009

Latest Status Info

EXHIBIT "A"

Page 1 of 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-10-15 15:56:09 ET

Serial Number: 74430251 Assignment Information Trademark Document Retrieval

Registration Number: 1847961

Mark (words only): APEX

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2004-09-16

Filing Date: 1993-08-27

Transformed into a National Application: No

Registration Date: 1994-08-02

Register: Principal

Law Office Assigned: LAW OFFICE 3

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-09-20

---

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

APEX STORES, LLC

Address:

APEX STORES, LLC  
10 MAIN STREET  
PAWTUCKET, RI 02860  
United States

Legal Entity Type: Ltd Liab Co

Date or Country Where Organized: Rhode Island

---

GOODS AND/OR SERVICES

---

International Class: 042

Class Status: Active

Latest Status Info

Page 2 of 3

etail department store services

basis: 1(a)

First Use Date: 1942-09-00

First Use in Commerce Date: 1942-09-00

---

#### ADDITIONAL INFORMATION

---

NOT AVAILABLE)

---

#### MADRID PROTOCOL INFORMATION

---

NOT AVAILABLE)

---

#### PROSECUTION HISTORY

---

004-09-16 - First renewal 10 year

004-09-16 - Section 8 (10-year) accepted/ Section 9 granted

004-07-22 - Combined Section 8 (10-year)/Section 9 filed

004-07-22 - TEAS Section 8 & 9 Received

004-01-26 - TEAS Change Of Correspondence Received

003-08-28 - TEAS Change Of Correspondence Received

000-10-17 - Section 8 (6-year) accepted & Section 15 acknowledged

000-06-30 - Section 8 (6-year) and Section 15 Filed

094-08-02 - Registered - Principal Register

094-05-10 - Published for opposition

094-04-08 - Notice of publication

094-01-18 - Approved for Pub - Principal Register (Initial exam)

094-01-06 - Examiner's amendment mailed

094-01-04 - Assigned To Examiner

093-12-22 - Assigned To Examiner

---

#### ATTORNEY/CORRESPONDENT INFORMATION

---

Attorney of Record

atest Status Info

Page 3 of 3

JOHN E. OTTAVIANI,

Correspondent

JOHN E. OTTAVIANI,  
EDWARDS & ANGELL, LLP  
PO BOX 55874  
BOSTON MA 02205  
Phone Number: 401-274-9200  
Fax Number: 401-276-6611

---

USPTO Assignments on the Web

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Assignments on the Web > Trademark Query

## Trademark Assignment Abstract of Title

### Total Assignments: 1

Serial #: 74430251

Filing Dt: 08/27/1993

Reg #: 1847961

Reg. Dt: 08/02/1994

Registrant: Apex Incorporated

Mark: APEX

### Assignment: 1

Reel/Frame: 2110/0428

Received: 07/28/2000

Recorded: 07/03/2000

Pages: 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: APEX INCORPORATED

Exec Dt: 06/08/2000

Entity Type: CORPORATION

Citizenship: RHODE ISLAND

Entity Type: CORPORATION

Citizenship: RHODE ISLAND

Assignee: APEX STORES, LLC

100 MAIN STREET

PAWTUCKET, RHODE ISLAND 02860

Correspondent: HINCKLEY, ALLEN & SNYDER LLP

LAWRENCE R. ROBINS

28 STATE STREET

BOSTON, MA 02109

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.0.1  
Web interface last modified: April 20, 2007 v.2.0.1

Search Results as of: 10/15/2007 03:55 PM

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Latest Status Info

EXHIBIT "B"

Page 1 of 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-10-15 15:56:41 ET

Serial Number: 74529131 Assignment Information Trademark Document Retrieval

Registration Number: 2155905

Mark (words only): APEX

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2004-06-02

Filing Date: 1994-05-25

Transformed into a National Application: No

Registration Date: 1998-05-12

Register: Principal

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-06-04

---

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

APEX STORES, LLC

Address:

APEX STORES, LLC

10 MAIN STREET

PAWTUCKET, RI 02860

United States

Legal Entity Type: Corporation

Date or Country of Incorporation: Rhode Island

---

GOODS AND/OR SERVICES

---

International Class: 037

Class Status: Active

Latest Status Info

Page 2 of 3

Automotive repair and maintenance services

Basis: 1(a)

First Use Date: 1924-00-00

First Use in Commerce Date: 1924-00-00

International Class: 042

Class Status: Active

etail automobile parts and accessories stores

Basis: 1(a)

First Use Date: 1924-00-00

First Use in Commerce Date: 1924-00-00

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#### ADDITIONAL INFORMATION

---

NOT AVAILABLE)

---

#### MADRID PROTOCOL INFORMATION

---

NOT AVAILABLE)

---

#### PROSECUTION HISTORY

---

04-06-02 - Section 8 (6-year) accepted & Section 15 acknowledged

04-05-12 - Response received for Post Registration action

04-05-12 - Section 8 (6-year) and Section 15 Filed

04-05-12 - TEAS Response to Office Action Received

04-05-12 - TEAS Section 8 & 15 Received

04-02-17 - Post Registration action mailed Section 8 & 15

04-01-26 - TEAS Change Of Correspondence Received

03-12-15 - Section 8 (6-year) and Section 15 Filed

03-12-15 - TEAS Section 8 & 15 Received

03-08-28 - TEAS Change Of Correspondence Received

98-05-12 - Registered - Principal Register

98-02-17 - Published for opposition

98-02-17 - Published for opposition

98-01-16 - Notice of publication



atest Status Info

Page 3 of 3

997-12-10 - Approved for Pub - Principal Register (Initial exam)

997-08-11 - Communication received from applicant

996-12-04 - Letter of suspension mailed

996-10-28 - Communication received from applicant

996-04-25 - Final refusal mailed

995-12-14 - Communication received from applicant

995-07-15 - Letter of suspension mailed

995-07-13 - Assigned To Examiner

995-05-14 - Communication received from applicant

994-11-17 - Non-final action mailed

994-10-19 - Assigned To Examiner

994-10-17 - Assigned To Examiner

994-10-17 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

JOHN E. OTTAVIANI

**Correspondent**

JOHN E. OTTAVIANI

EDWARDS & ANGELL, LLP

PO BOX 55874

BOSTON MA 02205

Phone Number: 401-274-9200

Fax Number: 401-276-6611

---

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Assignments on the Web > Trademark Query

## Trademark Assignment Abstract of Title

### Total Assignments: 1

Serial #: 74529131

Filing Dt: 05/25/1994

Reg #: 2155905

Reg. Dt: 05/12/1998

Registrant: Apex Incorporated

Mark: APEX

### Assignment: 1

Reel/Frame: 2110/0428

Received: 07/28/2000

Recorded: 07/03/2000

Pages: 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: APEX INCORPORATED

Exec Dt: 06/08/2000

Entity Type: CORPORATION

Citizenship: RHODE ISLAND

Entity Type: CORPORATION

Citizenship: RHODE ISLAND

Assignee: APEX STORES, LLC

100 MAIN STREET

PAWTUCKET, RHODE ISLAND 02860

Correspondent: HINCKLEY, ALLEN & SNYDER LLP

LAWRENCE R. ROBINS

28 STATE STREET

BOSTON, MA 02109

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.0.1  
Web interface last modified: April 20, 2007 v.2.0.1

Search Results as of: 10/15/2007 03:56 PM

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EXHIBIT "C"

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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-10-15 15:57:05 ET

Serial Number: 75781411 Assignment Information Trademark Document Retrieval

Registration Number: 2562812

Mark (words only): APEX ONLINE

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2007-09-13

Filing Date: 1999-08-23

Transformed into a National Application: No

Registration Date: 2002-04-23

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-09-13

---

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

Apex Stores, LLC

Address:

Apex Stores, LLC

100 Main Street

Wawtucket, RI 02860

United States

Legal Entity Type: Corporation

Date or Country of Incorporation: Rhode Island

---

GOODS AND/OR SERVICES

---

International Class: 035

Class Status: Active

Latest Status Info

Page 2 of 3

etail store, mail order purchase and computerized on-line retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, housewares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, software, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes, athletic footwear, novelties, food and Christmas items

Basis: 1(a)

First Use Date: 1996-11-01

First Use in Commerce Date: 1996-11-01

---

### ADDITIONAL INFORMATION

---

Disclaimer: "ONLINE"

Prior Registration Number(s):

847961

155905

---

### MADRID PROTOCOL INFORMATION

---

NOT AVAILABLE)

---

### PROSECUTION HISTORY

---

007-09-13 - Section 8 (6-year) accepted &amp; Section 15 acknowledged

007-09-12 - Assigned To Paralegal

007-08-28 - Section 8 (6-year) and Section 15 Filed

007-08-28 - TEAS Section 8 &amp; 15 Received

007-05-04 - Case File In TICS

004-01-26 - TEAS Change Of Correspondence Received

003-08-28 - TEAS Change Of Correspondence Received

002-04-23 - Registered - Principal Register

001-06-28 - Extension Of Time To Oppose Received

001-05-29 - Published for opposition

001-05-16 - Notice of publication

001-01-29 - Approved for Pub - Principal Register (Initial exam)

000-07-25 - Letter of suspension mailed

Latest Status Info

Page 3 of 3

2000-06-30 - Communication received from applicant

2000-01-31 - Non-final action mailed

2000-01-19 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

John E. Ottaviani

**Correspondent**

John E. Ottaviani

Edwards Angell Palmer & Dodge LLP

P.O. Box 130

F.D.R. Station

New York NY 10150

Phone Number: 401-274-9200

Fax Number: 401-276-6611

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**No assignment has been recorded at the USPTO**

**For Serial Number: 75781411**

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Web interface last modified: April 20, 2007 v.2.0.1

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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-10-15 15:57:28 ET

Serial Number: 75836787 Assignment Information Trademark Document Retrieval

Registration Number: 2657639

Mark (words only): APEX MALL

Standard Character claim: No

Current Status: Registered.

Date of Status: 2002-12-10

Filing Date: 1999-11-01

Transformed into a National Application: No

Registration Date: 2002-12-10

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 900 -File Repository (Franconia)

Date In Location: 2003-01-28

---

#### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

Apex Stores LLC

Address:

Apex Stores LLC

100 Main Street

Wawtucket, RI 02860

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Rhode Island

---

#### GOODS AND/OR SERVICES

---

International Class: 036

Class Status: Active

Latest Status Info

Page 2 of 3

HOPPING MALL SERVICES AND LEASING OF SHOPPING MALL SPACE

Basis: 1(a)

First Use Date: 1966-00-00

First Use in Commerce Date: 1966-00-00

---

**ADDITIONAL INFORMATION**

---

Disclaimer: "MALL"

Prior Registration Number(s):

847961

---

**MADRID PROTOCOL INFORMATION**

---

NOT AVAILABLE)

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**PROSECUTION HISTORY**

---

004-01-26 - TEAS Change Of Correspondence Received

003-08-28 - TEAS Change Of Correspondence Received

002-12-10 - Registered - Principal Register

002-09-17 - Published for opposition

002-08-28 - Notice of publication

002-05-14 - Approved for Pub - Principal Register (Initial exam)

002-05-09 - Examiner's amendment mailed

002-04-01 - Communication received from applicant

002-04-01 - PAPER RECEIVED

001-10-09 - Non-final action mailed

000-10-27 - Letter of suspension mailed

000-10-25 - Assigned To Examiner

000-09-15 - Communication received from applicant

000-03-14 - Non-final action mailed

000-03-09 - Assigned To Examiner

000-03-08 - Assigned To Examiner



Latest Status Info

Page 3 of 3

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Lawrence R. Robins

**Correspondent**

JOHN E. OTTAVIANI, ESQ.

DWARDS & ANGELL, LLP

PO BOX 55874

BOSTON MA 02205

Phone Number: 401-274-9200

Fax Number: 401-276-6611

---

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**No assignment has been recorded at the USPTO**

**For Serial Number: 75836787**

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Web interface last modified: April 20, 2007 v.2.0.1

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Latest Status Info

EXHIBIT "E"

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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-10-15 15:57:52 ET

Serial Number: 75781412 Assignment Information Trademark Document Retrieval

Registration Number: 2443933

Mark (words only): APEX STORES

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2007-05-21

Filing Date: 1999-08-23

Transformed into a National Application: No

Registration Date: 2001-04-17

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-05-21

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

Apex Stores, LLC

**Address:**

Apex Stores, LLC

100 Main Street

Providence, RI 02860

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Rhode Island

---

**GOODS AND/OR SERVICES**

---

International Class: 035

Class Status: Active

Latest Status Info

Page 2 of 3

etail store, mail order purchase and computerized on-line retail services, featuring, domestics, furniture, bedding, kitchenware, major appliances, small appliances, housewares, bathroom accessories, living room and bedroom accessories, table top accessories, flatware, power equipment, electronics, photography, jewelry, cosmetics, toys, software, music and video, gardening, handbags, sporting goods, clocks, luggage, home office, grills, clothing, men's and ladies' accessories, shoes, athletic footwear, novelties, food and Christmas items

basis: 1(a)

First Use Date: 1996-11-01

First Use in Commerce Date: 1996-11-01

---

### ADDITIONAL INFORMATION

---

Disclaimer: "STORES"

Prior Registration Number(s):

847961

155905

---

### MADRID PROTOCOL INFORMATION

---

NOT AVAILABLE)

---

### PROSECUTION HISTORY

---

007-05-21 - Section 8 (6-year) accepted & Section 15 acknowledged

007-05-15 - Assigned To Paralegal

007-04-17 - Section 8 (6-year) and Section 15 Filed

007-04-17 - TEAS Section 8 & 15 Received

006-11-21 - Case File In TIGRS

004-01-26 - TEAS Change Of Correspondence Received

003-08-28 - TEAS Change Of Correspondence Received

001-04-17 - Registered - Principal Register

001-01-23 - Published for opposition

000-12-22 - Notice of publication

000-11-08 - Approved for Pub - Principal Register (Initial exam)

000-11-08 - Assigned To Examiner

000-07-25 - Letter of suspension mailed

atest Status Info

Page 3 of 3

000-06-30 - Communication received from applicant

000-01-31 - Non-final action mailed

000-01-19 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

John E. Ottaviani

**Correspondent**

John E. Ottaviani

Edwards Angell Palmer & Dodge LLP

P.O. Box 130

W.D.R. Station

New York NY 10150

Phone Number: 401-274-9200

Fax Number: 401-276-6611

---

USPTO Assignments on the Web

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**Assignments on the Web > Trademark Query**

**No assignment has been recorded at the USPTO**

**For Serial Number: 75781412**

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.0.1  
Web interface last modified: April 20, 2007 v.2.0.1

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Latest Status Info

EXHIBIT "F"

Page 1 of 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-10-15 15:58:19 ET

Serial Number: 78319107 Assignment Information Trademark Document Retrieval

Registration Number: 2918976

Mark (words only): APEX ADVANTAGE

Standard Character claim: No

Current Status: Registered.

Date of Status: 2005-01-18

Filing Date: 2003-10-27

Transformed into a National Application: No

Registration Date: 2005-01-18

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-01-18

---

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

Apex Stores, LLC

Address:

Apex Stores, LLC  
10 MAIN STREET  
PAWTUCKET, RI 02860  
United States

Legal Entity Type: Ltd Liab Co

State or Country Where Organized: Rhode Island

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GOODS AND/OR SERVICES

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International Class: 040

Class Status: Active

Latest Status Info

Page 2 of 3

CUSTOM FINISHING AND EMBELLISHMENT OF PROMOTIONAL ITEMS, NAMELY, EMBROIDERY, EMBOSSEMENT, ENGRAVING, CUSTOMIZED PRINTING, IMPRINTING, SCREEN PRINTING AND PAD PRINTING WITH COMPANY NAMES, LOGOS, MONOGRAMS, WORDS, AND/OR PICTURES FOR PROMOTIONAL AND ADVERTISING PURPOSES ON THE GOODS OF OTHERS, NAMELY, SPORTSWEAR, APPAREL AND OTHER PRODUCTS.

Basis: 1(a)

First Use Date: 1996-12-01

First Use in Commerce Date: 2002-09-01

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### ADDITIONAL INFORMATION

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Prior Registration Number(s):

847961

956407

155905

443933

562812

657639

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### MADRID PROTOCOL INFORMATION

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NOT AVAILABLE)

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### PROSECUTION HISTORY

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005-11-17 - TEAS Change Of Correspondence Received

005-01-18 - Registered - Principal Register

004-10-26 - Published for opposition

004-10-06 - Notice of publication

004-08-30 - PAPER RECEIVED

004-09-07 - Published for opposition

004-08-30 - FAX RECEIVED

004-08-18 - Notice of publication

004-07-22 - TEAS Response to Office Action Received

004-05-31 - Approved for Pub - Principal Register (Initial exam)

004-05-27 - Examiners amendment e-mailed

004-05-11 - Assigned To Examiner



Latest Status Info

Page 3 of 3

2004-01-26 - TEAS Change Of Correspondence Received

2003-11-20 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

JOHN E. OTTAVIANI

**Correspondent**

John E. Ottaviani, Esq.

Edwards Angell Palmer & Dodge, LLP

P.O. Box 55874

Boston MA 02205

Phone Number: 401-274-9200

Fax Number: 401-276-6611

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**No assignment has been recorded at the USPTO**

**For Serial Number: 78319107**

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350, v.2.0.1  
Web interface last modified: April 20, 2007 v.2.0.1

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Latest Status Info

EXHIBIT G

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Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-10-15 15:58:48 ET

Serial Number: 78928036 Assignment Information Trademark Document Retrieval

Registration Number: 3244685

Mark

**APEX COMPANIES**

Words only): APEX COMPANIES

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2007-05-22

Filing Date: 2006-07-12

Transformed into a National Application: No

Registration Date: 2007-05-22

Register: Principal

Law Office Assigned: LAW OFFICE 111

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-05-22

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

Apex Stores, LLC

Address:

Apex Stores, LLC  
10 Main Street

atest Status Info

Page 2 of 3

awtucket, RI 02860

nited States

egal Entity Type: Ltd Liab Co

tate or Country Where Organized: Rhode Island

---

**GOODS AND/OR SERVICES**


---

**International Class:** 040**Class Status:** Active

ustom finishing and embellishment of promotional items, namely, embroidery, embossing, engraving, customized  
rinting, imprinting, screen printing and pad printing with company names, logos, monograms, words, and/or pictures  
r promotional and advertising purposes on the goods of others, namely, sportswear, apparel and other products

**asis:** 1(a)**irst Use Date:** 2002-09-01**irst Use in Commerce Date:** 2002-09-01

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**ADDITIONAL INFORMATION**


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**isclaimer:** "COMPANIES"**rior Registration Number(s):**

918976

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**MADRID PROTOCOL INFORMATION**


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NOT AVAILABLE)

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**PROSECUTION HISTORY**


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107-05-22 - Registered - Principal Register

107-03-06 - Published for opposition

107-02-14 - Notice of publication

107-01-12 - Law Office Publication Review Completed

107-01-12 - Assigned To LIE

106-12-16 - Approved for Pub - Principal Register (Initial exam)

106-12-14 - Examiner's Amendment Entered

106-12-14 - Examiners amendment e-mailed

106-12-14 - Examiners Amendment -Written

106-12-11 - Assigned To Examiner

Latest Status Info

Page 3 of 3

006-07-18 - New Application Entered In Tram

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

John E. Ottaviani

**Correspondent**

JOHN E. OTTAVIANI

DWARDS ANGELL PALMER & DODGE LLP

PO BOX 55874

BOSTON, MA 02205-5874

Phone Number: 401-274-9200

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**No assignment has been recorded at the USPTO**

**For Serial Number: 78928036**

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.0.1  
Web interface last modified: April 20, 2007 v.2.0.1

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**EXHIBIT 4**

## EDWARDS ANGELL PALMER & DODGE LLP

2800 Financial Plaza Providence, RI 02903 401.274.9200 fax 401.276.6611 eapdlaw.com

F.D.R. Station  
P.O. Box 130  
New York, NY 10150

John E. Ottaviani  
401.276.6405  
fax 888.325.9049  
jottaviani@eapdlaw.com

### **CONFIDENTIAL** **FOR SETTLEMENT PURPOSES ONLY**

March 10, 2008

Christine M. Klenk, Esq.  
Manatt Phelps Phillips  
1001 Page Mill Road, Bldg. 2  
Palo Alto, CA 94304

Re **Apex Stores, LLC v. 24-Hour Fitness USA, Inc.**  
**TTAB Cancellation Proceeding No. 9204878**

Dear Christine:

We have had an opportunity to discuss this matter at length with our client and are responding to your inquiry as to whether we could settle this matter with a Letter of Consent. At this point, our client's position is that a Letter of Consent will not be sufficient to resolve the outstanding issues.

By way of background, our client is part of a group of Apex businesses run by the same family since Apex's inception in 1924. The Apex businesses engage in a variety of activities, including, manufacturing, retail, online retail, automotive tire, repair and service, real estate development and management, and financial services, among many others.

The trademark "APEX" is derived from the initials of the founder of Apex, Albert Pilavin. Having used "Apex" extensively for almost a century, and having invested in excess of tens of millions of dollars in advertising and promoting the mark over the past 84 years, the Apex Companies and the family that owns them have a great deal of emotional as well as financial investment in the "APEX" trademark. The retail businesses, including the online and physical retail businesses, are a long standing tradition. Our client has also made extensive use of the APEX mark for its Apex credit card and customer loyalty programs, among other things, associated with its retail services throughout the U.S. Historically, our client has also operated various retail stores under the name "APEX," including department stores, specialty stores, automotive stores and various websites, from which it sells a very wide variety of merchandise, including health and fitness clothing and equipment, health and beauty items and food.



EDWARDS ANGELL PALMER & DODGE LLP

Christine Klenk

March 10, 2008

Page 2

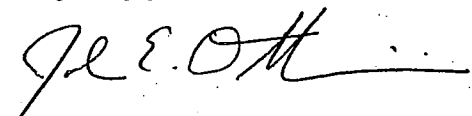
Our client was not aware of your client's use of the Apex Fitness mark, and, in fact, did not know your client existed, until very recently. Our client is concerned, not only with your client's use of "APEX" and "APEX FITNESS" for retail sales of nutrition supplements and foods and exercise programs, but also that your client's mark looks very much like variations of our client's mark and that your client seems to be expanding its use of the term Apex and using it in very similar ways to our client. Given our client's use of the trademark "APEX" for over 84 years for retail sales and online sales, and its prior use of its APEX mark in connection with the sale of health and fitness products, our client is unwilling to compromise its significant history and the investment it has made in the term APEX and wants to protect its rights. It appears to us that there is a great likelihood of confusion should your client continue to use the APEX and APEX FITNESS marks for its expanding goods and services. Given our client's long history of doing business under the Apex name, and its use which dates back for three quarters of a century before your client came into existence, our client hopes we can resolve this issue amicably.

Our client certainly continues to be open to settlement discussions, and suggests that we suspend the proceedings to permit such discussions to continue if your client is interested. One possible scenario would include permitting your client some period of time to continue to use the APEX FITNESS mark while phasing it out and developing a new brand identity or adopting the 24-HOUR FITNESS brand. You and your client may also have proposals to offer that we have not considered.

Please let me know whether or not your client is amenable to suspending the proceeding and continuing settlement discussions.

I am also enclosing a copy of our client's initial disclosures required by the new TTAB rules.

Very truly yours,



John E. Ottaviani

cc: President, Apex Stores, LLC

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

APEX STORES, LLC

Petitioner,

V.

24-HOUR FITNESS USA, INC.

Registrant

Cancellation Proceeding No. 92048378

## PETITIONER'S INITIAL DISCLOSURES

Pursuant to Fed. R. Civ. P. 26(a)(1) and 37 C.F.R., §2.120(a), Petitioner, Apex Stores, LLC, by and through its attorneys, hereby provides its initial disclosures.

## INTRODUCTION

1. These disclosures are made solely for purposes of this proceeding. Each disclosure is subject to any and all objections as to competency, relevancy, materiality, propriety, privilege, admissibility, and to any and all other objections and grounds that would require the exclusion of any statement made herein if any such statement were made by, or if any questions were asked of, a witness present and testifying in court, all of which objections and grounds are hereby expressly reserved, and may be interposed later at or before the time of trial.

2. Petitioner has not yet completed discovery and/or trial preparation. The disclosures contained herein are based on Petitioner's knowledge, information, and belief at this time, and are made without prejudice to the foregoing following objections. Petitioner specifically reserves the right to amend and/or supplement its disclosures herein at any time or to introduce facts not contained herein if it should appear at any time that omissions or errors have

been made or if it obtains additional or more accurate information. Petitioner further reserves the right to rely upon such facts, and persons having knowledge of such facts, as may be derived through future discovery or through its continuing investigation in this matter or as may be adduced at trial.

### DISCLOSURES

I. Individuals with Discoverable Information --- the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims and defenses, unless the use would be solely for impeachment.

The following individuals are likely to have discoverable information that the Petitioner may use to support its claims and defenses:

1. Andrew Gates, President of Apex Stores, LLC, c/o John Ottaviani, Edwards, Angell, Palmer & Dodge, 2800 Financial Plaza, Providence, Rhode Island 02903 (401) 274 - 9200. Mr. Gates has knowledge regarding the use of Petitioner's various "Apex" marks by it and its predecessors and affiliates (collectively the "Apex Companies") including advertising and marketing information, promotional materials and sales of goods and/or services using the Apex marks, and also regarding service mark and trade mark registrations and corporate structure of the Apex Companies.

II. Categories of Documents in Petitioner's Possession That It May Use to Support Its Claims or Defenses. --- A copy or a description by category and location -- and tangible things that the disclosing party has in its possession, custody or control and may use to support its claims, counterclaims or defenses, unless the use would be solely for impeachment:

Petitioner has in its possession, custody, and/or control documents fitting the below descriptions that it may use to support its claims, counterclaims and defenses:

1. Documents evidencing the Apex Companies' use of the Apex marks.
2. Documents evidencing Registrant's use of its marks.
3. Certificates of Registration and trademark prosecution documents for the Apex marks.
4. Documents relating to the Apex Companies' use, advertising, marketing and promotion of the Apex marks.
5. Documents relating to the Apex Companies' efforts to enforce its trademark rights in and to the Apex marks.
6. Documents relating to sales of goods and/or services made using the Apex marks.

The above documents are available at the following location(s):

1. Such documents are located at the Apex Companies' corporate headquarters and warehouses in Pawtucket, Rhode Island, and/or on the Internet.

In addition, Petitioner reserves the right to use additional documents that are currently in the possession of Registrant, which will be revealed during discovery, to support its claims, counterclaims and defenses.

### III. Computation of Damages:

A computation of each category of damages claimed by the disclosing party whom must also make available for inspection and copying as under rule 34 the documents or other evidentiary materials, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

NONE AVAILABLE AT THIS TIME.

IV. Insurance Agreements:

For inspection and copying under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnity or reimburse for payments made to satisfy the judgment.

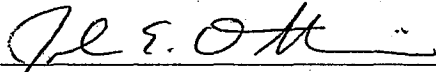
NONE AVAILABLE AT THIS TIME

Apex Stores, LLC reserves the right to supplement or amend these disclosures as may be appropriate.

APEX STORES, LLC

By its attorneys,

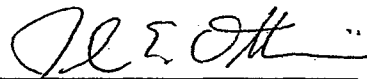
DATED: March 10, 2008

  
John E. Ottaviani  
Edwards Angell Palmer & Dodge LLP  
2800 Financial Plaza  
Providence, Rhode Island 02903  
Tel: (401) 274-9200  
Fax: (888) 325-9049  
jottaviani@eapdlaw.com

CERTIFICATE OF SERVICE

I, John E. Ottaviani, hereby certify that on this 10<sup>th</sup> day of March, 2008, this document was served via facsimile and first class mail, postage prepaid, to the following attorneys of record for Registrant:

Susan E. Hollander, Esq.  
Britt L. Anderson, Esq.  
Christine M. Klenk, Esq.  
Manatt Phelps & Phillips LLP  
One Embarcadero Center, 30<sup>th</sup> Floor  
San Francisco, CA 94111  
Fax: (415) 291-7474

  
John E. Ottaviani